

REMARKS

This amendment is submitted in response to the non-final Office Action mailed on March 24, 2005. Claims 1-21 are pending in this application. In the Office Action, Claims 1-21 are rejected under 35 U.S.C. §112, second paragraph and Claims 1-2, 11-14 and 16-17 are rejected under 35 U.S.C. §102. In response Claim 3 has been amended. This amendment does not add new matter. In view of the amendments and/or for the response set forth below, Applicant respectfully submits that the rejections should be withdrawn.

In the Office Action, Claims 1-21 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Regarding the term “releasably associable,” Applicant respectfully submits that this term is clear to one having ordinary skill in the art. For example, in the present claims, the term “releasably associable” refers to the capsule magazine unit being associated (e.g. used together) with the magazine receiving portion of a device for preparing a food or beverage. The capsule magazine unit is not permanently associated with or attached to the device, but can be released, removed or separated from the device at an appropriate time or for an appropriate purpose. Regarding the term “placed moved,” Applicant has amended Claim 3 to address the informalities cited by the Patent Office.

Based on at least these noted reasons, Applicant believes that Claims 1-21 fully comply with 35 U.S.C. §112, second paragraph. Accordingly, Applicant respectfully requests that the rejection of Claims 1-21 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-2, 11-14 and 16-17 are rejected under 35 U.S.C. §102(b) as anticipated by Germany DE 20105672 U1 (“*DE ‘672*”). Applicant respectfully disagrees with and traverses these rejections for at least the reasons set forth below.

Claim 1 recites, in part, a capsule magazine unit that is releasably associable with a magazine receiving portion of a device for preparing a food or beverage, comprising at least one capsule magazine configured for receiving a plurality of capsules that contain a substance for preparing the food or beverage, the magazine having a removal opening configured and dimensioned for removal of the capsules from the magazine; a capsule retainer associated with the magazine and movable with respect thereto between a retaining position, in which the retaining member blocks the removal opening sufficiently to keep the capsules from falling

through the retaining opening, and a releasing position, in which the retaining member allows the capsules to be removed from the magazine through the opening for the preparation of the food or beverage; and a retainer positioner associated with the retainer and configured for moving the retainer between the retaining and the releasing position upon an association of the positioner with a first portion of the device. In contrast, Applicant respectfully submits that the *DE '672* reference fails to structurally meet Claim 1.

DE '672 has a corresponding U.S. patent application 2004/0112222 (attached as Exhibit A), which claims priority from the *DE '672* reference. The corresponding U.S. application will give further clarification and guidance to the Patent Office as Applicant details why *DE '672* is deficient with respect to Claim 1 and the claims that depend therefrom.

First, *DE '672* fails to disclose or suggest the present claims because it does not show a capsule retainer associated with the magazine and movable with respect to the magazine between two positions (e.g. retaining position and releasing position) as required by Claim 1. Second, *DE '672* fails to show a retainer positioner associated with the retainer and configured for moving the retainer between the two positions upon association of the positioner with a first portion of the device as required by Claim 1.

A basic feature, for example, of the present invention is to provide a system (e.g. a retainer) that holds capsules in magazines when the magazine unit is transported to a machine and loaded into the machine by a user. Further, the magazine unit has a positioner to actuate the retainer in order to provide an opening for the capsules when the magazine unit is inserted in the machine and used therein.

This feature is not disclosed in *DE '672*. Instead, *DE '672* discloses a magazine unit comprising a magazine table 17 and magazine tubes 20. There is a radial lower opening 33 in each tube for enabling the capsule to be ejected by a capsule ejection system (arm 24 of Fig. 2) when the magazine is inserted into the machine. In the bottom of the magazine table 17, there are slots 49 that enable a gripper 23 of the ejection system to move the capsule through the opening and to the extraction module. The magazine table 17 is swiveled on a plate drawer 18 that can slide with respect to guiding elements 46 of the machine so that the magazine unit can be inserted to and removed from the machine.

As is clearly apparent, *DE* '672 fails to disclose or suggest a capsule retainer to prevent the capsule from being removed from the tubes during transport because the openings 33 of the magazine tubes 20 remain open. In fact, there is no capsule retainer that can obstruct the openings 33 during transport as required by Claim 1. Further, there is no retainer positioner because there is no capsule retainer in *DE* '672. Consequently, the Patent Office has not provided any support to show that *DE* '672 discloses the capsule retainer and retainer position of Claim 1.

For the reasons discussed above, Applicant respectfully submits that Claim 1 and Claims 2, 11-14 and 16-17 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited reference.

Accordingly, Applicant respectfully requests that the rejection of Claims 1-2, 11-14 and 16-17 under 35 U.S.C. §102(b) be withdrawn.

Claims 3-10, 15 and 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to overcome the §112, second paragraph, rejections and in independent form including all of the limitations of the base claim and any intervening claims. Applicant has overcome the §112 rejections as discussed previously. However, Applicant respectfully submits that the patentability of Claim 1 renders moot the objections of Claims 3-10, 15 and 18-20. In this regard, the cited art fails to teach or suggest the elements of Claims 3-10, 15 and 18-20 in combination with the novel elements of Claim 1.

Claim 21 would be allowable if rewritten to overcome the §112, second paragraph, rejection. Applicant respectfully submits that the arguments as discussed previously have overcome the §112 rejections and Claim 21 should be rendered allowable.

For the foregoing reasons, Applicant respectfully requests reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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